CONSTITUTION PETROLEUM CO., INC.

IBLA 83-406 Decided December 12, 1983

Appeal from decision of Eastern States Office, Bureau of Land Management, dismissing protest to BLM's finding that a private lease on acquired lands was invalid.

Affirmed.

1. Oil and Gas Leases: Generally -- Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Assignments or Transfers -- Oil and Gas Leases: Termination

   Where a 1941 private oil and gas lease provides that the lease be held by production beyond its 3-year term and where there was no evidence of production beyond 1956 on the leased lands when the Forest Service acquired the lands in 1976, an "assignment" of such lease in 1979 is invalid since the lease terminated when production ceased.

2. Trespass: Generally

   When appellant does not have a rightful claim to the lands it is occupying, the United States is entitled to a court order directing appellant to remove itself and its possessions from the land and directing that if it does not do so by a specified date, the remaining structures would be deemed abandoned and property of the United States.

APPEARANCES: Page P. Blakemore, Sr., president, Constitution Petroleum Co., Inc., for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Constitution Petroleum Co., Inc., appeals from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated January 26, 1983, dismissing appellant's protest to BLM's finding that appellant's private lease on acquired lands is invalid. BLM noted that there was a private oil and gas lease in 1941 and found that a well apparently produced oil or gas, but not beyond 1956. BLM based its decision on the fact then when the Forest Service (FS) purchased the land which encompassed the lease in 1975, there was no production on the lease. BLM stated that the appellant's claim to the private lease was invalid because any operation beyond the primary lease term must be held by production.

The lease in issue, comprised of 30.15 acres, is situated on acquired lands in the NW 1/4 NW 1/4 sec. 34, T. 1 N., R. 5 W., Grandview Township, Ohio River Survey, Wayne National Forest, Washington County, Ohio. A copy of the original oil and gas lease dated October 15, 1941, shows Grover C. Heddleston as lessor and Ellen Anderson as lessee. Anderson assigned the lease to Charles Alloway in 1943 who assigned his interest in the lease to Southern Enterprises in 1975. The subject tract was acquired by FS on May 13, 1976, from Glenn R. Dye. No mineral rights were reserved in this transaction. In March 1979 Webb Enterprises, formerly doing business as Southern Enterprises, assigned the lease to Page P. Blackmore, operating as Constitutional Petroleum Co., Inc. In 1980 appellant drilled a well on the property without the knowledge and consent of FS. In late 1980, FS discovered that appellant had apparently drilled a producible well on this tract and in July 1981 appellant conceded that the well was located on this tract in error.

By letter of August 10, 1981, FS informed appellant that since the well site was owned by the United States, appellant's occupancy was illegal; FS ordered appellant to refrain from producing oil or gas from the tract and ordered it not to undertake any additional surface resource disturbance until further notice. Appellant was allowed 30 days from receipt of this letter to show cause why it should be allowed to produce oil and gas from this well. This period of time having elapsed without word from appellant, FS notified appellant on September 15, 1981, that the matter of its trespass had been referred to Geological Survey (GS). 1/ FS stated that appellant must refrain from all activity on this tract, unless specifically ordered in writing to do otherwise.

In response, appellant made a title search for the tract and submitted documents to show that it is the current lessee of the subject tract under the old private lease. As a result of its investigation, appellant now believes that it located the well correctly. By letter of November 10, 1981, FS informed the GS Conservation Division of the documents appellant had submitted. FS stated that it was its opinion that the documents did not establish that appellant had a valid lease because production was not continuous beyond the primary lease term and that cessation of production in 1956 was believed to have terminated the lease. Appellant was not informed of this opinion. This parcel was recommended for competitive leasing for the June 3, 1982, competitive oil and gas lease sale, but due to the conflict concerning the validity of the private lease, this tract was deleted from that sale. On October 30, 1982, BLM informed appellant that the lease was invalid since any operation beyond the primary term must be held by production. BLM stated that unless appellant could produce additional data to sufficiently support its claims, the lands would be offered for competitive leasing. Appellant protested and on January 26, 1983, BLM issued its decision dismissing the protest.

1/ By Secretarial Order No. 3071 published in the Federal Register on Feb. 2, 1982, 47 FR 4751, the Secretary created the Minerals Management Service to, inter alia, take over the functions of the Conservation Division, Geological Survey. Secretarial Order No. 3087, dated Dec. 3, 1982, consolidated the onshore mineral leasing functions of the Minerals Management Service and the BLM within BLM. This order was amended on Feb. 7, 1983, but the amendment is not relevant to this discussion.

On appeal, appellant asserts that the title search demonstrated that Dye had sold the property to FS subject to existing oil and gas leases; that appellant, relying on the records of Washington County, Ohio, drilled an oil and gas well on the tract; and that FS informed appellant that a well had been drilled on a nearby lease, also owned by FS and that the location was invalid. Appellant submitted copies of the following documents to FS: original lease, map of property submitted for drilling permit, log of Heddleston No. 1 well drilled by Alloway, production records of the Heddleston No. 1 and royalty paid thereon, identical property plat in permit application for Constitution well, and completion report submitted to the State of Ohio for Constitution well.

Appellant asserts that it has been deprived of due process of the law because BLM did not recognize its lease rights, notwithstanding the fact that the granting clause of the instrument conveying the property to the FS made reference to existing oil and gas leases. Appellant contends that its actions were made in good faith, relying on records normally used in a title search. According to appellant, the original lease was held by Alloway's well and production therefrom. Appellant states that it has expended at least $170,000 on the well and that the well is productive of oil and gas. Appellant asserts that BLM is attempting to confiscate lessee's rights and improvements upon the leased premises in disregard of lessee's rights and without any compensation to the lessee.

[1] The original oil and gas lease between Heddleston and Anderson specified that the lease period would be 3 years from the date of the lease and "as much longer as gas or oil is found in paying quantities thereon." Although the information submitted by appellant is evidence of production in 1956 when Alloway was operating the lease, there is no evidence of any production after that date until appellant resumed production in 1980. When production ceased after 1956, the lease terminated by its own terms. Consequently, in 1979 appellant should have been aware of the fact that there was no production on the lease and, therefore, there were no rights to be assigned. The fact that appellant made a proper title search and relied on the records of the State of Ohio is irrelevant.

All of appellant's arguments are without merit because there was no lease in existence either at the time of acquisition by the FS or at the time the lease was purportedly assigned to appellant. If the lease had been in production, 2/ the Government would have recognized the existence of the private lease when it acquired the tract in 1976 and would have received royalties from the production. See Acting Associate Solicitor's Opinion, M-36430 (Mar. 29, 1957).

[2] Appellant alleges that the Government is attempting to confiscate its improvements upon the leased premises in disregard of its rights and without any compensation to lessee. As explained above, there are no "leased premises" as there is no lease in existence. Appellant has no right to occupy the tract which has been owned by the Government since 1976. The United

2/ In the letter of Nov. 10, 1981, from FS to the GS Conservation Division, FS stated that when it purchased the property in 1975, the FS appraiser certified that "abandoned oil well equipment (no production on tract)" existed.

States Government has, with respect to its own lands, rights of an ordinary proprietor to maintain its possession and to prosecute trespassers; it may deal with such lands precisely as a private individual may deal with his property. United States v. Osterlund, 505 F. Supp. 165 (D. Colo. 1981), aff'd United States v. Osterlund, 671 F.2d 1267 (10th Cir. 1982) and cases cited therein. The fact that appellant occupied the land and made improvements does not give him any vested rights therein against the United States. United States v. Osterlund, supra; United States v. Connery, 303 F. Supp. 828 (N.D. Fla. 1969).

Where appellant does not have a rightful claim to the land, the United States is entitled to seek a court order directing it to remove itself and its possessions from the land and directing that if it does not do so by a specified date, the remaining structures would be deemed abandoned and property of the United States. United States v. Smith Christian Mining Enterprises, Inc., 537 F. Supp. 57 (D. Oreg. 1981).

Also, we note that 36 CFR Part 252, promulgated by the Secretary of Agriculture, pursuant to 16 U.S.C. §§ 478 and 551 (1976), requires claimants to file a plan of operation and obtain FS approval of that plan before conducting work in connection with prospecting, exploration or mineral development and processing. Section 252.4(a) provides that a "notice of intention to operate is required from any person proposing to conduct operations which might cause disturbances of surface resources." The Ninth Circuit has approved the authority of the FS to regulate the use of forest lands. See United States v. Goldfield Deep Mines Co. of Nevada, 644 F.2d 1307, 1309 (9th Cir. 1981)., cert denied, 455 U.S. 907 (1982).

There is no evidence in the file to show that appellant complied with this regulation.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas C. Henriques
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

James L. Burski
Administrative Judge